

**UNITED STATES DISTRICT COURT
For the
DISTRICT OF RHODE ISLAND**

NATIONAL LIABILITY & FIRE INSURANCE
CO. and BOAT OWNERS ASSOCIATION OF
OF THE UNITED STATES
Plaintiffs

v.

NATHAN CARMAN
Defendant.

Civil Action:
No: 17-cv-0038-S-PAS

In Admiralty

DEFENDANT, NATHAN CARMAN'S MOTION PURSUANT TO F.R.Civ.P. 37(c) TO
EXCLUDE TRIAL EXHIBITS NOT PROPERLY AND/OR TIMELY DISCLOSED
PURSUANT TO F.R.Civ.P 26(a)(1)A)(ii)

Now comes the Plaintiff in the above captioned matter and pursuant to F.R.Civ.P. 37(c) respectfully request that this Honorable Court exclude from introduction in evidence at trial the below listed Plaintiff's Exhibits¹:

Pl's Ex. # 5.58	Fiberglass Boat Repair Kit
Pl's Ex. # 5.59	Carman's life raft specs
Pl's Ex. # 6.1.1	NH Dep. Vol I Video
Pl's Ex. # 6.2.1	NH Dep. Vol. II Video
Pl's Ex. # 6.3.1	NH Dep. Ex. 1
Pl's Ex. # 6.3.2	NH Dep. Ex. 2
Pl's Ex. # 6.3.3	NH Dep. Ex. 3
Pl's Ex. # 6.3.4	NH Dep. Ex. 4
Pl's Ex. # 6.3.5	NH Dep. Ex. 5
Pl's Ex. # 6.3.6	NH Dep. Ex. 6
Pl's Ex. # 6.3.8	NH Dep. Ex. 8
Pl's Ex. # 6.3.9	NH Dep. Ex. 9
Pl's Ex. # 6.3.10	NH Dep. Ex. 10
Pl's Ex. # 6.3.11	NH Dep. Ex. 11
Pl's Ex. # 6.3.12	NH Dep. Ex. 12
Pl's Ex. # 6.3.13	NH Dep. Ex. 13
Pl's Ex. # 6.3.14	NH Dep. Ex. 14

¹ The exhibit numbers and are from Plaintiffs' Exhibit List [Doc. # 141]

Pl's Ex. # 6.3.15	NH Dep. Ex. 15
Pl's Ex. # 6.3.16	NH Dep. Ex. 16
Pl's Ex. # 6.3.17	NH Dep. Ex. 17
Pl's Ex. # 6.3.18	NH Dep. Ex. 18
Pl's Ex. # 6.3.19	NH Dep. Ex. 19
Pl's Ex. # 6.3.20	NH Dep. Ex. 20
Pl's Ex. # 6.3.23	NH Dep. Ex. 23
Pl's Ex. # 6.3.24	NH Dep. Ex. 24
Pl's Ex. # 6.3.25	NH Dep. Ex. 25
Pl's Ex. # 6.3.26	NH Dep. Ex. 26
Pl's Ex. # 6.3.27	NH Dep. Ex. 27
Pl's Ex. # 6.3.28	NH Dep. Ex. 28
Pl's Ex. # 6.3.29	NH Dep. Ex. 29
Pl's Ex. # 6.3.30	NH Dep. Ex. 30
Pl's Ex. # 6.3.31	NH Dep. Ex. 31
Pl's Ex. # 6.3.32	NH Dep. Ex. 32
Pl's Ex. # 6.3.33	NH Dep. Ex. 33
Pl's Ex. # 6.3.34	NH Dep. Ex. 34
Pl's Ex. # 6.3.35	NH Dep. Ex. 35
Pl's Ex. # 6.3.36	NH Dep. Ex. 36
Pl's Ex. # 6.3.37	NH Dep. Ex. 37
Pl's Ex. # 6.3.38	NH Dep. Ex. 38
Pl's Ex. # 6.3.39	NH Dep. Ex. 39
Pl's Ex. # 6.3.40	NH Dep. Ex. 40
Pl's Ex. # 6.3.41	NH Dep. Ex. 41
Pl's Ex. # 6.3.42	NH Dep. Ex. 42
Pl's Ex. # 6.3.43	NH Dep. Ex. 43
Pl's Ex. # 6.3.44	NH Dep. Ex. 44
Pl's Ex. # 6.3.45	NH Dep. Ex. 45
Pl's Ex. # 6.3.46	NH Dep. Ex. 46
Pl's Ex. # 6.3.48	NH Dep. Ex. 48
Pl's Ex. # 6.3.49	NH Dep. Ex. 49
Pl's Ex. # 6.3.50	NH Dep. Ex. 50
Pl's Ex. # 6.3.51	NH Dep. Ex. 51
Pl's Ex. # 6.3.52	NH Dep. Ex. 52
Pl's Ex. # 6.3.53	NH Dep. Ex. 53
Pl's Ex. # 6.3.54	NH Dep. Ex. 54
Pl's Ex. # 6.3.55	NH Dep. Ex. 55
Pl's Ex. # 6.3.57	NH Dep. Ex. 57
Pl's Ex. # 6.3.58	NH Dep. Ex. 58
Pl's Ex. # 6.3.59	NH Dep. Ex. 59
Pl's Ex. # 6.3.60	NH Dep. Ex. 60
Pl's Ex. # 6.3.62	NH Dep. Ex. 62
Pl's Ex. # 6.3.63	NH Dep. Ex. 63
Pl's Ex. # 12.19	Woods Supplemental Bulkhead Photo.jpg
Pl's Ex. # 12.23	2012-01-1000.49.06.jpg

Pl's Ex. # 12.25	2012-01-10 00.59.29.jpg
Pl's Ex. # 12.26	2012-01-10 10 00.49.42.jpg
Pl's Ex. # 12.34	2012-01-10 00.50.51.jpg
Pl's Ex. # 12.37	at dock.jpg
Pl's Ex. # 12.40	Underway video (Video)
Pl's Ex. # 12.48	DSC01358 w tt.jpg
Pl's Ex. # 12.53	Actual Plug Ex. 1.2.3. (Object)
Pl's Ex. # 12.54	Construction Photo 1268929701721
Pl's Ex. # 12.55	Construction Photo DSCF0463.jpg
Pl's Ex. # 12.56	Construction Photo IMG-20130517_182218.jpg
Pl's Ex. # 13.1	PJM Tim Green Service Email to Carman
Pl's Ex. # 13.2	PJM Repair Order-Inv 15151
Pl's Ex. # 15.1	Hole Saw Exemplar (Object)
Pl's Ex. # 16.1	Linda Carman-Sharon Hartstein text messages
Pl's Ex. # 17.1	TowBoatU.S. Rhode Island
Pl's Ex. # 17.8	Claims Procedure Manual excerpts
Pl's Ex. # 18.2	USCG FOIA Response
Pl's Ex. # 18.3	SAROPS, Supp By 1-4-19 email
Pl's Ex. # 18.4	Page 8 of 41, Supp by 1-4-19 email
Pl's Ex. # 25.4	12-23-15 Letter Proof of Mailing Policy
Pl's Ex. # 25.3	2018-02-21, Envelope w Ltr. Policy & Endorsements
Pl's Ex. # 25.5	2016-11-29 Email
Pl's Ex. # 25.6	VT Dept Fin Reg Ins Div Excerpts
Pl's Ex. # 25.7	BoatUS Documents
Pl's Ex. # 27.1	Fidelity TOD Beneficiary Designation Form
Pl's Ex. # 28.1	Nathan Handwritten Note to Attorney Calio
Pl's Ex. # 28.2	Carman's typed memorandum to Attorney Calio
Pl's Ex. # 28.3	Atty Calio Letter to Nathan
Pl's Ex. # 28.4	Will of John Chakalos
Pl's Ex. # 28.5	Chakalos Dynasty Trust
Pl's Ex. # 28.6	Disclaimer, Renunciation and Release of Power of Appointment
Pl's Ex. # 28.7	Linda Carman Trust
Pl's Ex. # 29.1	WPD Press Release 12-21-13
Pl's Ex. # 29.2	CT State Apartment video analysis
Pl's Ex. # 29.3	WPD Timeline
Pl's Ex. # 29.4	CT Ballistics report
Pl's Ex. # 29.5	WPD J. Chakalos' murder investigation file
Pl's Ex. # 30.1	SO02-SO08 Receipt-ATF
Pl's Ex. # 30.2	SO01 – Shooter's Outpost Invoice
Pl's Ex. # 30.3	Sig Sauer Patrol Rifle 762 Exemplar (Object)
Pl's Ex. # 32.1	Orient Lucky IMO Crew List - Certification
Pl's Ex. # 32.2	Orient Lucky Deck Log - Certification
Pl's Ex. # 32.3	Orient Lucky Chart - Certification
Pl's Ex. # 32.4 through Ex. # 32.24 (inclusive),	[21 visual exhibits, 20 Photos and 1 Video]

As grounds for the exclusion of the above listed Plaintiff's Exhibits the Defendant asserts that the Plaintiffs failed to properly disclose these exhibits as required by F.R.Civ.P. 26(a)(1)(A)(ii) and F.R.Civ.P. 26(e), and/or failed to disclose these exhibits in a timely manner in accordance with F.R.Civ.P. 26(a)(1)(A)(ii) and F.R.Civ.P. 26(e). Pursuant to Fed.R.Civ.P. 37(c)(1) "[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Plaintiff's have not established that their failure to properly disclose the above listed Plaintiffs' Exhibits was substantially justified or harmless. Accordingly, the Plaintiffs should be precluded from introducing these exhibits into evidence at trial.

Defendant further relies upon the attached Memorandum In Support of this Motion as well as the attached Exhibits "A" – "N"

WHEREFORE, the Defendant, Nathan Carman, respectfully requests that Pursuant to F.R.Civ.P. 26(a)(1)(A)(ii), F.R.Civ.P. 26(e) and F.R.Civ.P. 37(c)(1) this Honorable Court enter an Order precluding the Plaintiffs' from introducing into evidence at trial the proposed exhibits listed on pages 1-3 of this Motion.

Respectfully Submitted
On behalf of the Defendant,
Nathan Carman

/s/ David F. Anderson
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Dated July 31, 2019

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the above date, I electronically filed the above pleading with the Clerk of the Court using CM/ECF system which will send notification of such filing(s) to all counsel of record for all parties.

/s/David F. Anderson
David F. Anderson